

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALKETA R. SMITH,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Civil Case No.13-11610
Honorable Linda V. Parker

Defendant.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S MAY 27,
2014 REPORT AND RECOMMENDATION;**
(2) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;
(3) DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;
**AND (4) REMANDING FOR FURTHER ADMINISTRATIVE
PROCEEDINGS**

On April 10, 2013, Plaintiff filed this lawsuit challenging a final decision of the Social Security Commissioner denying Plaintiff's application for Disability Insurance Benefits and Supplemental Security Income under the Social Security Act. On the same date, the matter was referred to Magistrate Judge R. Steven Whalen for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation ("R&R") on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 4.) The parties subsequently filed cross-motions for

summary judgment. (ECF Nos. 14, 23.)

Magistrate Judge Whalen issued his R&R on May 27, 2014, recommending that this Court grant Plaintiff's motion, deny Defendant's motion, and remand the matter for further administrative proceedings. (ECF No. 26.) Magistrate Judge Whalen rejects most of Plaintiff's challenges to the Administrative Law Judge's decision, but finds insufficient medical evidence in the record on the issue of equivalence with respect to the ALJ's step three determination of Plaintiff's claim. (*Id.*) He therefore recommends that this Court remand the matter for the ALJ to "obtain a qualified medical opinion on the issue of equivalence." (*Id.* at 17, quoting *Lindsey v. Comm'r of Soc. Sec'y*, No. 12-12585, 2013 WL 6095545, at *7 (E.D. Mich. Nov. 20, 2013).)

At the conclusion of the R&R, Magistrate Judge Whalen advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 23-24.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* at 23) No objections to the R&R were filed.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Whalen. The Court therefore adopts Magistrate Judge Whalen's May 27, 2014 Report and Recommendation.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment (ECF No. 14) is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment (ECF No. 23) is **DENIED**;

IT IS FURTHER ORDERED, that this matter is remanded to the Commissioner for further proceedings consistent with Magistrate Judge Whalen's May 27, 2014 Report and Recommendation.

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 15, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 15, 2014, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager